

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 18-MD-2865 (LAK)

IN RE:

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL
EXAMINATION OF
ADAM WARREN

DATE: April 5, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 12

1 A D A M W A R R E N ,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:
4
5
6
7

8 EXAMINATION BY MR. OXFORD:

9 MR. OXFORD: Thanks, Mike. Thanks,
10 Jose.

11 Q Good morning, Mr. Warren. As I
12 said before we jumped on the record, my name
13 is Neil Oxford from Hughes, Hubbard & Reed.
14 I represent the plaintiff SKAT in this case
15 and I will be asking you some questions this
16 morning.

17 A Okay.

18 Q I take it from your resume this is
19 not your first deposition rodeo?

20 A No, it is not.

21 Q Okay. So I'm sure you're familiar
22 with the job, but just for the sake most of
23 Mike and Jose, I'm going to try to ask my
24 questions as clearly as possible and I'm
25 going to let you finish your answers before I

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 179

1 Q You have no reason to dispute that
2 similar correspondence exists where ED&F Man
3 makes a market claim for each of the Annex E
4 Schedule 1 tax vouchers to the seller or
5 purported seller of the shares, MPT Dubai?

6 MR. DILLMAN: Objection.

7 MR. PRUDEN: Objection.

8 A Again, I can't really state
9 explicitly either way.

10 Q Okay. Other than the fact that the
11 seller in the Annex E transactions was
12 MPT Dubai, which is an affiliate of ED&F Man
13 Capital Markets, and the sellers in the
14 non-Annex E cum ex transactions were not
15 affiliates of Man Capital markets, were you
16 aware of any differences between the Annex E
17 and non-Annex E cum ex transactions?

18 MR. DILLMAN: Objection.

19 A Other than the -- other than the
20 case where I believe ED&F Man, the Dubai
21 firm, was a some -- somehow was related to
22 Man, so Man knew what their position was, the
23 difference being that the other firms where
24 they did have market claims that were
25 apparently paid were unrelated firms to Man,

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 180

1 external firms who met the -- met their
2 obligations.

3 Q So is it fair to say that the only
4 difference you're aware of between the
5 Annex E and non-Annex E cum ex transactions
6 is the seller in the Annex E transactions was
7 ED&F Dubai, which is an affiliate of ED&F Man
8 Capital Markets?

9 MR. DILLMAN: Objection.

10 A I guess that's one of -- that's one
11 main difference between them.

12 Q Okay. Let's tick through all the
13 others to make sure we have an exhaustive
14 list of your opinions here.

15 Any other main differences between
16 those two transactions?

17 MR. DILLMAN: Objection.

18 A External firms, non-related.

19 Q That's the same as the first one,
20 though, sir?

21 A I'm sorry.

22 MR. DILLMAN: Objection.

23 A I think that's the -- that is the
24 main reason. And ultimately they met their
25 obligations.

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 181

1 Q But ED&F Man Dubai -- sorry,
2 Man Capital Markets also met
3 their obligations, too, sir. They paid a
4 market claim to ED&F Man, which passed on
5 that market claim to the Acer plans for the
6 Annex E trades, didn't they?

7 MR. DILLMAN: Objection.

8 A Again, that was outside my analysis
9 and outside of my report, the relationship
10 and the payments from Dubai.

11 Q Okay. So can I just get a list
12 of -- withdrawn.

13 Do you have any understanding why
14 ED&F Man considers that the non-Annex E
15 cum ex transactions resulted in a dividend
16 payment to the Acer plans, but the Annex E
17 cum ex transactions did not?

18 MR. DILLMAN: Objection.

19 A I guess you'll have to ask Man why
20 they believe it. I'm merely looking at the
21 documentation and I'm accepting their
22 statements in Annex E.

23 Q Okay. And did you ask them whether
24 those same flaws with the Annex E cum ex
25 transactions applied also to the non-Annex E

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 182

1 transactions?

2 MR. DILLMAN: Objection.

3 A Again, outside of the scope of
4 my -- it was outside of the scope of my
5 analysis or report.

6 Q Okay. So do you have any opinion,
7 sir, that you can help us with as to the
8 reason why we should believe that the
9 non-Annex E cum ex transactions validly
10 conveyed a dividend to the Acer plans when
11 the Annex E ones did not?

12 MR. DILLMAN: Objection.

13 A Again, I don't get into the
14 reasoning. I get into what the evidence
15 presented to me showed.

16 It showed what appears to be actual
17 transactions and it appears to be confirmed
18 by e-mails from outside entities who have no
19 relationship to Man.

20 Q And did you look for any of the
21 evidence as to what the actual transactions
22 were underlying the Annex E transactions?

23 MR. DILLMAN: Objection.

24 MR. PRUDEN: Objection.

25 A I guess what do you mean by the

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 183

1 "actual transactions?"

2 Q Oh, I'm sorry. I was just using
3 your term.

4 Your answer was to my last
5 question, "The evidence showed me -- showed
6 what appears to be actual transactions."

7 A Yes.

8 Q That's what I'm talking about.

9 A Okay. Where we can reconcile
10 equities, where we could reconcile -- where
11 it appeared -- where the evidence appeared to
12 show, based on our knowledge and experience,
13 that -- that these transactions occurred.

14 In addition, we accepted that the
15 Annex E transactions were -- by Man's
16 statements were not -- not actual payments.

17 Q When you say "not actual payments,"
18 sir, you're not trying to tell me that no
19 payments were made?

20 A No, that there -- I believe they're
21 disavowing that there are -- that there are
22 appropriate payments.

23 Q What you're trying to say is that
24 ED&F Man is disavowing that the statements on
25 the Annex E tax vouchers that the plans

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 184

1 receive dividends and suffered withholding
2 tax, those are the statements that ED&F Man
3 is disavowing?

4 MR. DILLMAN: Objection.

5 A Yeah, for the Schedule 1s, yes.

6 Q Right. And partly for the
7 Schedule 2s.

8 Correct?

9 A And for partially the Schedule 2.
10 That is my understanding of what the
11 statement is.

12 MR. DILLMAN: Objection, Neil.

13 Hold on, Neil. You're talking over the
14 witness' responses a little bit. It's
15 a -- everyone should try to slow it
16 down, especially for Mike.

17 A I know there's very specific
18 language in Annex E regarding what it means.

19 Q Is it fair to say, sir -- okay.

20 Is it fair to say, sir, that you
21 and your team did no work to understand
22 whether the flaws that were inherent in the
23 Annex E tax vouchers equally applied to the
24 non-Annex E tax vouchers?

25 MR. DILLMAN: Objection.

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 185

1 A No, that's not fair to say. That's
2 not fair to say.

3 Q Okay. Tell me all the work you
4 guys did, please.

5 A We made sure that there was
6 evidence in the reconciliations of payments,
7 that ultimately they were not disavowed
8 by -- as part of Annex E, made sure that
9 there was -- especially the -- what you would
10 call the trades that traded before or during
11 the cum dividend period and that settled
12 before the record date.

13 We made sure that there was
14 documentation showing the purchase, that
15 there was stock in -- in the accounts, that
16 there were deliveries of both stock and there
17 was a dividend or an equivalent amount of
18 cash to what would be the expected dividend
19 delivered into that account.

20 Q Okay. So I have three -- three
21 pieces of work you did. Is that right?

22 Did I get the number right, sir?

23 MR. DILLMAN: Objection.

24 A I think there was -- there was even
25 more in the case of dividend reclaims. We

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 186

1 followed up on the dividend reclaims, so we
2 looked at both external data, which is
3 transfers via SWIFT message, e-mails from
4 other brokers.

5 We ultimately looked at ED&F Man's
6 internal reconciliation system. We looked at
7 their payment system -- I believe it's called
8 Shadow Suite -- which shows the transfer of
9 dividends to the accounts of the individual
10 clients.

11 Q Okay. Anything else?

12 A I think also the confirms.

13 Q What confirms, sir?

14 A We looked at the confirms that were
15 generated as a result of the transactions.

16 Q What do you mean, "confirms?"

17 A When there is a stock purchase,
18 there's a standard confirmation that the
19 client receives as a part of that trade.

20 Q Okay. Anything else?

21 A That's -- that's in all of the
22 statements. We -- we started -- honestly, we
23 started with the -- with the requests for the
24 orders that are -- that were put forth by
25 Acer for the transactions.

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 187

1 Q Okay. Anything else?

2 A I'm sure if I looked back at the
3 notes I can remember. But those are the
4 things that we looked at.

5 Q Okay. Great. So I'm just going to
6 go through them, and I'd like you to tell me,
7 each category, what your team found was the
8 difference between the Annex E cum ex trades
9 and the non-Annex E cum ex trades.

10 Do you understand?

11 A Uh-huh.

12 Q Okay. So just doing it in reverse
13 order, you told me that trade orders were
14 placed, requests by Acer for the transaction
15 to happen.

16 What were the differences that your
17 team found in the trade requests by Acer
18 between, on the one hand, the Annex E trades,
19 and on the other hand, the non-Annex E cum ex
20 trades?

21 MR. DILLMAN: Objection.

22 Q Any differences?

23 A You know, I can't remember case by
24 case. I would have to go through each one of
25 these.

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 188

1 Q Okay. Just think of one.

2 Can you give me one example where
3 there was a difference between the Annex E
4 trades and the non-Annex E trades in the
5 trade confirms --

6 MR. DILLMAN: Objection.

7 Q -- in the orders, sir?

8 A Again I can't --

9 MR. DILLMAN: Objection.

10 A -- remember specifically.

11 Q Okay. Generally, can you give
12 me -- like you say you looked at all the
13 differences.

14 Was there any difference?

15 MR. DILLMAN: Objection.

16 A Again, you're asking me to go
17 through all of the notes. I'm sure if I went
18 through all of my notes --

19 Q No, I'm not. No, I'm absolutely
20 not.

21 What I'm asking you --

22 MR. DILLMAN: Objection.

23 Objection. Let the witness finish,
24 please.

25 Q What I'm asking you, sir, is to

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 189

1 tell me what you remember about the work that
2 your team did. You said you looked at seven
3 categories. I think there's a lot of overlap
4 in there, but we'll go through that.

5 Just doing it in reverse order so
6 it's fresh in your mind, I'm asking you
7 anything you can tell me about the
8 differences your team found -- in the orders
9 placed by Acer on behalf of the Acer
10 plans -- between the Annex E and non-Annex E
11 cum ex trades?

12 MR. DILLMAN: Objection.

13 A I don't remember specifically the
14 difference in the orders.

15 Q Okay. Just going back at the
16 table, you told me trade confirms.

17 Any difference that you can tell me
18 in this investigation that you and your team
19 did of the differences between the Annex E
20 and non-Annex E cum ex trades?

21 Did the confirms look different in
22 any way?

23 MR. DILLMAN: Objection.

24 A Again, I don't remember
25 specifically.

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 190

1 Q Okay. You gave me -- it was of
2 your first and fifth response. Your first
3 one was "evidence of reconciliation of
4 payments and internal reconciliation in the
5 Shadow Suite system."

6 Do you remember telling me about
7 those items?

8 MR. DILLMAN: Objection.

9 A There are two different things.
10 There's the dividend reconciliation that Man
11 has, and then there is the Shadow Suite which
12 is the cash -- internal cash system --

13 Q Okay.

14 A -- that Man uses.

15 Q Great. Okay. So let's -- and I
16 appreciate that confirmation. Let's stick
17 with the internal Shadow Suite system.

18 Can you tell me if your team, in
19 your analysis of what the differences were
20 between Annex E and non-Annex E cum ex
21 trades, what differences did you see in the
22 Shadow Suite system of payments?

23 MR. DILLMAN: Objection.

24 A Non-Annex E cum ex trades?

25 Q Yeah. The whole line of

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 191

1 questioning is about the difference between
2 the Annex E and non-Annex E cum ex trades.

3 You told me that you looked in
4 seven places, and I'm just trying to
5 understand --

6 (Whereupon a discussion was held
7 off the record.)

8 MR. DILLMAN: Mr. Warren, make sure
9 you give me an opportunity to respond as
10 well with an objection if need be.

11 Q Yeah, so you have three people
12 asking you to slow down.

13 A I will slow down.

14 Q Tell me everything, all the
15 differences your team found in the Shadow
16 Suite system of payments between the Annex E
17 and non-Annex E cum ex trades.

18 MR. DILLMAN: Objection.

19 A All right. The -- the non-Annex E
20 trades were all what you would consider to be
21 cum-cum trades. Those were trades where the
22 settlement occurred and where -- where the
23 majority of them were the settlement
24 occurring before the record date or on the
25 record date.

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 192

1 The Annex E trades were a mixture
2 of trades. The majority of the Type 2 trades
3 were the cum -- were what you would call a
4 cum ex trade, because there's a component of
5 both -- in many of these cases, there's a
6 component of what you would call a cum-cum
7 trade in it, but also a component of a
8 dividend reclaim trade in it, in several
9 cases.

10 And then there's a component of
11 trades that were done with Dubai in them. So
12 those are some of the differences that we
13 found across the different trades.

14 Q Okay. Well, that's just not true,
15 sir, is it? You just testified --

16 MR. DILLMAN: Objection.

17 Q -- that all of the non-Annex E
18 trades or cum-cum trades, and that's just
19 false.

20 And you know it's false, isn't it?

21 MR. DILLMAN: Objection.

22 A Yes. I'm not saying all of them.

23 Q You know it's false.

24 Right?

25 MR. DILLMAN: Objection. Hold on,

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 193

1 hold on. It seems like we're probably
2 nearing a time for another break if
3 we're going to be jumping at each other
4 like this. Objection. You can answer
5 the question.

6 Q Do you want to start your answer
7 again?

8 A I would need to go back and look at
9 all of them to make -- to make the kind of
10 statement you're asking to make.

11 Q It's not my statement, sir. It's
12 your answer. You just testified that all --
13 (Whereupon a discussion was held
14 off the record.)

15 Q You just told me -- it's not my
16 statement, sir. I'm not testifying here.
17 You are.

18 You just told me that the
19 differences that your team observed between
20 the Annex E and non-Annex E trades was that
21 all of the non-Annex E trades were cum-cum.

22 A No.

23 Q I put it to you that that's just
24 false. It is flatly inconsistent with your
25 report and it's flatly inconsistent with your

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 194

1 testimony here today.

2 MR. DILLMAN: Objection.

3 A Let me step back a minute here.

4 I'm getting cross -- across myself.

5 Part of it is -- part of what we
6 observed was Man's statement in Annex E,
7 especially Schedule 1, which we accepted.

8 Q Have you finished your answer?

9 A Not quite. I'm just --

10 Q Please -- please.

11 A I don't want to cross.

12 Q Well, if you pause, I'm going to
13 ask another question.

14 A Okay. Can I -- can I finish?

15 Q Please, yeah. And maybe just let
16 me know when you have finished.

17 MR. DILLMAN: And maybe we should
18 take a break after this answer.

19 THE WITNESS: I think we definitely
20 need a break after this. I'm getting a
21 little tired.

22 A In the Annex E, Type 2 or Section 2
23 trades, we noted that there were, in some of
24 them, not all of them, what you would call a
25 cum-cum trade. There was, in some of them,

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 195

1 transactions with Man Dubai, which Man
2 in -- in Annex E, Section 2 said did not
3 result in a -- in a payment.

4 And finally, there were, in many of
5 these, dividend recaptures. And then the
6 final --

7 Q What's the difference, sir --
8 sorry.

9 MR. DILLMAN: Hold on.

10 A The final group showed dividend
11 payments and generally dividend -- and in the
12 case where there was a recapture, there was a
13 recapture payment there.

14 But that's what I remember exactly
15 from there. There may be more.

16 Q What's a "dividend recapture?"

17 A It's a dividend capture payment, or
18 a market claim.

19 MR. DILLMAN: Neil, it's -- when
20 you have a break spot?

21 MR. OXFORD: Yeah, that's fine.
22 Why don't we take ten minutes.

23 MR. DILLMAN: Thank you.

24 THE VIDEOGRAPHER: Stand by. The
25 time is 4:23 p.m. and we're going off

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 196

1 the record.

2 (Brief recess taken.)

3 THE VIDEOGRAPHER: Stand by. The
4 time is 3:45 p.m. and we're back on
5 record.

6 Q All right. Okay.

7 Before we broke, Mr. Warren, we
8 were running through the list of the reasons
9 that -- that you and your team found that the
10 Annex E cum ex trades were different than the
11 non-Annex E cum ex trades. I'd like to pick
12 up on the Shadow Suite answer, because I
13 think your answer got a little distracted.

14 Can you tell me, please, in
15 reviewing all of the work you did and your
16 team did in preparing your reports, what
17 differences between the Annex E cum ex trades
18 and the non-Annex E cum ex trades differences
19 did you observe in the Shadow Suite system,
20 if any?

21 MR. DILLMAN: Objection.

22 A With regards to -- well, first of
23 all, I want to say that I looked in my report
24 in Appendix 1. There's a list of all of the
25 non-Annex E, Annex E, et cetera. I misspoke

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 197

1 with regards to the non-Annex E.

2 There is one instance where there
3 is a dividend reclaim or market claim and
4 that's AIG December 13th Coloplast. And
5 that's due to what you refer to as a cum ex
6 trade as part of that transaction.

7 Q Aren't there two, sir?

8 A I got one.

9 Q Doesn't the -- the TDC trade on
10 Annex E, Schedule 2 fall into that same
11 category?

12 A I'm referring to non-Annex E.

13 Q Okay. So tell me again what you're
14 talking about, the Coloplast trade?

15 A The non-Annex E Coloplast trade has
16 a market reclaim for a market claim
17 transaction from December 13th AIG. That's
18 the one trade we have which does not have an
19 MT 566, but has a market reclaim.

20 Q Okay. I think there's one more,
21 but let's come back to that.

22 Did you hear my question, sir,
23 about Shadow Suite?

24 A Again, with regard to Shadow Suite,
25 as I -- Shadow Suite is more of the internal

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 198

1 payment system, my understanding, with Man,
2 and shows the reconciliation of the dividend
3 payments. The biggest difference between the
4 Annex E trades, which we understand were not
5 eligible for a dividend payment, was first of
6 all, Man's admission of that, but also the
7 fact that the counterparty on these trades
8 was MPT Dubai where Man admitted that they
9 were not due a dividend payment.

10 Q Okay. Sir, this is going to be a
11 very long deposition if you don't try to
12 answer my questions.

13 You told me before the break that
14 one of the areas that you and your team
15 looked at to identify differences between the
16 Annex E and non-Annex E cum ex trades was
17 Shadow Suite.

18 Do you remember telling me that?

19 A I believe I did.

20 MR. DILLMAN: Objection.

21 A I believe I was probably a little
22 tired and maybe mistaken at that point. I
23 don't think --

24 Q Okay. So is it --

25 A I don't think Shadow Suite

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 199

1 necessarily is a place where there's a
2 difference. Shadow Suite, as I understand
3 it, shows payments.

4 Q Okay. So let's be quite clear.
5 There are no differences in the Shadow Suite
6 system in the payments made with respect to
7 the Annex E cum ex trades and the non-Annex E
8 cum ex trades.

9 Correct?

10 MR. DILLMAN: Objection.

11 A Not that I can recall.

12 Q Okay. So we can take that off the
13 list. So I'm going to go back and we'll go
14 to your two new ones -- well, I guess your
15 summary ones in a moment. It may be a little
16 hard to follow.

17 I'm going to give you the first
18 four reasons you gave me when I asked you
19 this question.

20 Are you ready for this?

21 A Okay.

22 Q I asked you to tell me all the work
23 you did to understand whether the flaws
24 inherent in the Annex E cum ex trades were
25 also in -- were not present in the

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 200

1 non-Annex E trades. You gave me the
2 following answer.

3 "We made sure that there was
4 evidence in the reconciliations of payments
5 that were ultimately not disavowed by" -- I
6 don't know if that's "1" or "2."

7 Do you know what you were talking
8 about there, sir?

9 MR. DILLMAN: Objection.

10 A I believe that that first one is
11 we're talking about the schedule -- the
12 Annex E Schedule 1 transactions whereby
13 MPT Dubai was the counterparty. That -- that
14 was one of the key indicators and also Man's
15 admission in Schedule 1 of Annex E.

16 Q Okay. So let's -- we'll take the
17 admission off the table because I actually
18 think that's correct. I'm just trying to
19 sort through the rest of your answer to see
20 if there's any "there" there.

21 When you talked about the evidence
22 of reconciliation of payments, what do you
23 mean?

24 A Again, specifically in the context
25 of what was different between Annex E and

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 201

1 non-Annex E cum ex?

2 MR. DILLMAN: Objection.

3 A Again, in many cases, we saw that
4 the payment of dividend for non-Annex E by
5 the -- by the banks was equivalent to what
6 Man had reconciled in their dividend
7 reconciliation.

8 Q Isn't that the case also for the
9 non-Annex E cum ex trades?

10 MR. DILLMAN: Objection.

11 A In many of the cum ex trades, in
12 several of them, we found that there were not
13 enough shares that added up -- that there
14 were either not shares available or, in the
15 case of the counterparty, it was MPT Dubai.

16 Q Hold on. So are we back to there
17 not being enough shares for the Annex E
18 trades?

19 MR. DILLMAN: Objection.

20 A Where is the --

21 Q Because you spent about 20 minutes
22 telling me that this morning and then said
23 you got confused and you went back.

24 MR. DILLMAN: Objection.

25 A That the custodian bank themselves

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 202

1 didn't have -- had shares for a certain
2 amount, but there were other shares that
3 didn't seem to reconcile and tie in for other
4 participants. Primarily, again, it is the
5 fact that there is the MPT Dubai as the
6 counterparty and Man stating that they were
7 not -- that the Annex E transactions were not
8 entitled to a dividend payment.

9 Ultimately, it's Man.

10 Q Don't worry, sir. We're going to
11 get to those, too. I'm just trying to sort
12 through the rest of your last answer.

13 What work did you and your team do
14 with respect to the Annex E shares and your
15 testimony that the custodian bank themselves
16 had shares for a certain amount, but it
17 didn't seem to reconcile and tie in?

18 What are you talking about?

19 MR. DILLMAN: Objection.

20 MR. PRUDEN: Objection.

21 A Again, we're trying to -- I'm going
22 down the -- a rabbit hole here on the wrong
23 track. Our goal was not to ultimately
24 reconcile the non -- or I'm sorry, the
25 Annex E trades. The Annex E trades we

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 203

1 accepted from Man as being not entitled to
2 dividend payments.

3 Ultimately, we looked at them, but
4 we ultimately accepted them as being not
5 entitled to dividend payments.

6 Q Okay. And when you looked at them,
7 did you find that there were enough shares at
8 the custodian bank to satisfy the Annex E
9 trades or not?

10 MR. DILLMAN: Objection.

11 A Yeah, I don't remember offhand if
12 there was enough shares. Again, I would have
13 to go back and to look at the work that we
14 all -- that we did on this.

15 Q Did your team, yes or no, do any
16 work to understand, for the Annex E trades,
17 whether or not there were sufficient shares
18 in ED&F Man's sub-custodial banks to settle
19 the Annex E transactions?

20 Yes or no?

21 MR. DILLMAN: Objection.

22 A Ultimately, that was not part of
23 our assignment, to reconcile the Annex E
24 trades.

25 Q So did you do any work to try and

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 204

1 reconcile the Annex E trades? Because it
2 sort of sounds like you did some work and
3 then didn't finish it.

4 MR. DILLMAN: Objection.

5 A Sorry. Not that I'm aware of. We
6 didn't finish anything regarding that.

7 We left that alone.

8 Q Okay. So I asked you a question
9 what seems like a couple of days ago.

10 "Is it fair to say that you and
11 your team did no work to understand whether
12 the flaws that were inherent in the Annex E
13 tax vouchers applied equally to the
14 non-Annex E tax vouchers?"

15 And you said, "No, that's not
16 fair."

17 MR. DILLMAN: Objection.

18 Q And then I asked you about all the
19 work you did. Should we go back and re-ask
20 that question, sir?

21 Did your team do any work to
22 understand whether the flaws that were
23 inherent in the Annex E tax vouchers applied
24 equally to the non-Annex E tax vouchers?

25 MR. DILLMAN: Objection.

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 205

1 A That was outside of the scope of
2 our work, our assignment here.

3 Q So the correct -- so the correct
4 answer to my question would be, "We did no
5 such work, sir?"

6 MR. DILLMAN: Objection.

7 A We never -- we never -- we did not
8 do enough work to reach a conclusion.

9 Q Okay. Now we're back to doing some
10 work.

11 What work did you -- did you do?

12 MR. DILLMAN: Objection, asked and
13 answered.

14 A Again --

15 Q What differences did you see?

16 MR. DILLMAN: Objection.

17 A (Witness reviewing.)

18 What we did is we reviewed the
19 trade packs provided by counsel to determine,
20 ultimately, whether the pension plans had
21 acquired certain Danish securities.

22 And these included looking at the
23 documentation, which included the tax
24 voucher. It included any e-mails or
25 instructions between Acer and the brokers.

CONFIDENTIAL
Adam Warren – April 5, 2022

Page 206

1 We looked at the confirms. We
2 looked at any other types of -- there was a
3 hodgepodge of information. We looked at the
4 SWIFT settlements.

5 We looked at the internal
6 reconciliations of Man. We looked at the
7 dividend payments from the -- from Man's
8 corresponding banks.

9 And we looked at the dividend
10 payments allocated and internal -- and
11 internally made by Man.

12 Q Okay. And in all of that work,
13 other than the fact that the counterparty for
14 the Annex E trades was MPT Dubai, and other
15 than the fact that ED&F Man admits that the
16 Annex E trades did not result in a dividend
17 and the plan suffered no tax liability, did
18 you identify or your team identify any other
19 differences between the Annex E cum ex trades
20 and the non-Annex E cum ex trades?

21 MR. DILLMAN: Objection.

22 A Any -- any difference between the
23 Annex E and the non-Annex E cum ex trades?

24 Again, the difference that we
25 recognized was -- was the fact that they were

CONFIDENTIAL
Adam Warren - April 5, 2022

Page 207

1 not part of Annex E, that Man did not admit
2 that they were not entitled.

3 Q Okay.

4 A That there was -- and that there
5 was evidence that a trade had occurred.

6 Q But wasn't there evidence that a
7 trade had occurred for both Annex E and
8 non-Annex E trades, the same kind of
9 evidence?

10 MR. DILLMAN: Objection.

11 A But then Man had not claimed that
12 they were not entitled to a -- to a dividend.

13 Q Okay. So is it fair to say, sir,
14 that the only difference that you're aware of
15 between the Annex E and non-Annex E cum ex
16 trades is that ED&F Man has admitted, for the
17 Annex E trades, no dividend was conveyed and
18 no withholding tax suffered?

19 MR. DILLMAN: Objection.

20 A Again, ultimately, that is -- that
21 is the conclusion.

22 Q Okay. That wasn't so hard, was it?

23 MR. DILLMAN: Objection. Just ask
24 questions.

25 MR. OXFORD: Okay. Let's ask a

Errata Sheet

Caption: *In re Customs & Tax Administration of the Kingdom of Denmark (Skatteforvaltningen) Tax Refund Litigation, Master Docket No. 18-md-2865 (LAK)*

Witness: Adam Warren

Deposition Date: April 5, 2022

Page/Line	Now Reads	Should Read	Reason for Change
17:2, 3	Amco	Kamco	Transcription Error
17:5	New Song	Newsong	Spelling Error
26:15	Eric Shah	Sean Frankel	Correction
28:2-3	I believe it is equally split between Acer and ED&F Man.	Acer is paying all fees.	Correction
32:1-2	Optionable options	Put options	Correction
34:5-6	market places	marketplaces	Spelling Error
41:7	cycle	cycles	Correction
41:9-10	trade date, also known as T plus 3.	Trade Date,” also known as ‘T plus 3.’	Correction
41:18-22	Mr. Wade goes on to note that “after October 2014, the standard settlement cycles for equity transactions in Denmark occurred on the second business day after the trade date, also known as T plus 2.”	Mr. Wade goes on to note that after October 2014, the standard settlement cycles for equity transactions in Denmark occurred on the second business day after the trade date, also known as T plus 2.	Correction
42:15	shares to	shares . . . to	Correction
43:12	record date	Record Date	Capitalization Error
43:16-18	one to two days before the setting of the ex-dividend date.	one to two days before the date on which the ex-dividend date was set.	Clarification

Page/Line	Now Reads	Should Read	Reason for Change
61:22-23	meaning trades that are made prior to the ex-dividend date	meaning that the trades are made prior to the ex-dividend date	Correction
71:20	they've have	they have	Transcription Error
73:20	do they own their face supply	do they on their face apply	Transcription Error
73:24	standards	standard	Transcription Error
79:9	uses	use	Correction
79:10	multiple, successive ownerships	successive multiple ownership	Correction
80:24	Page 5	Paragraph 5	Correction
83:6, 10, 12 93:1 97:7 109:11 138:20 179:22, 25 181:19 182:19 190:10, 14 198:1, 8 201:6 202:6, 9 203:1 206:6, 11 207:1, 11 215:21 217:7 220:21	Man	ED&F Man	Clarification
85:17	vouchers	Tax Vouchers	Correction
85:18	of shares	of the shares	Correction
85:25-86:1 103:12-13	third party, the sub-custodian	third party (the sub-custodian)	Correction
87:5	So delivery of the shares, in certain cases, the shares were physically delivered.	When the SWIFT messages were created, that meant that the shares were physically delivered.	Clarification
88:8-9	I believe there are cases where shares were not delivered	I believe there are cases where shares were not delivered out of a covered position held by MPT Dubai	Clarification
91:20	tax vouchers	Tax Vouchers	Correction

Page/Line	Now Reads	Should Read	Reason for Change
95:13-15	For that case, I did not do a reconciliation of the actual delivery of shares.	We did not do a separate reconciliation of the delivery of shares by referencing the securities account statements at BNP Paribas. We only examined the SWIFT messages showing the delivery of the shares.	Clarification.
105:3 117:8 183:15 194:6 198:6 206:7	Man's	ED&F Man's	Clarification
108:19	pension plan cum-cum	pension plan purchased cum-cum	Correction
111:18	depo	depot	Spelling Error
111:23	all	all of	Correction
113:10	of shares	of the shares	Correction
113:14-15	"Answer: Yes, they did." I'm sorry. The answer was yes, I believe." "Question: And would the shares be	"Answer: Yes, they did. I'm sorry." "Question: The answer was yes, I believe. And would the shares be	Clarification
116:19-20	tax vouchers	Tax Vouchers	Spelling Error
116:23	plans' account	Plan's account	Correction
125:14	"the AIG plan was	the AIG plan "was	Correction
125:24-25	which hopefully—which are not readable.	which are not readable.	Clarification
126:21	"the AIG plan was holding	the AIG plan "was holding	Correction
128:19	opinion	impact	Transcription Error
137:24-25	It's not a hypothetical it's what occurred in this case.	It's not a hypothetical. It's what occurred in this case.	Correction
141:4	SWIFT custodian	SWIFT confirmation	Transcription Error
147:12	No opinions.	No opinions on whether it would be improper to settle a separate transaction using the 100 shares previously used to settle this hypothetical "cum-cum" transaction.	Clarification
148:8	known Annex E	Non-Annex E	Transcription Error
151:4	party for whom ED&F	party from whom ED&F	Correction

Page/Line	Now Reads	Should Read	Reason for Change
155:8	standard of industry practice	standard industry practice	Transcription Error
163:14-15	on or before the date before the record date	on or before the record date	Correction
163:21	record date,	record date.	Punctuation Error
164:20-21	receipt of ED&F Man of a dividend	receipt by ED&F Man of a dividend	Transcription Error
167:20	or its share custodian	(or its share custodian)	Punctuation Error
173:4	a portion	the portion	Correction
173:5	ED&F	ED&F Man	Correction
179:20-21	ED&F Man, the Dubai firm,	MPT Dubai	Correction
191:19-21	The – the non-Annex E trades were all what you would consider to be cum-cum trades.	The non-Annex E trades, as analyzed in my report, were with one exception what you would consider to be cum-cum trades.	Correction
194:22	Annex E, Type 2 or Section 2	Annex E Schedule 2	Clarification
195:1	Man Dubai, which Man	MPT Dubai, which ED&F Man	Clarification
195:2	Annex E, Section 2	Annex E Schedule 2	Clarification
205:1-2	That was outside of the scope of our work, our assignment here.	Understanding the flaws underlying the Annex E tax vouchers was outside of the scope of our work, so we had no basis to compare those flaws to the non-Annex E tax vouchers.	Clarification
214:24	Dubai Limited, defined as MPT Dubai, the	(Dubai) Limited”—defined as MPT Dubai—“the	Correction
219:24	“was to	was “to	Punctuation Error
219:25	plans acquired	plans . . . acquired	Correction
220:1	security	securities	Correction
220:3	the	those	Correction
221:10	Queens	Queen’s	Punctuation Error
221:11	with	which	Transcription Error
221:13	ED&F Man,	ED&F Man.	Punctuation Error
226:11	ED&F Man and Dubai	ED&F Man Dubai	Correction
228:15	ED&F Man	ED&F Dubai	Clarification

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the above-captioned matter and the same is true and accurate, save and except for changes and/or

corrections as indicated by me on the deposition errata sheet hereof, with the understanding that I offer these changes as if still under oath.

Executed this 11 day of May, 2022

Adam Warren

Adam Warren